

Nicholas J. Henderson, OSB #074027

nhenderson@portlaw.com

Troy G. Sexton, OSB #115184

tsexton@portlaw.com

Motschenbacher & Blattner LLP

117 SW Taylor St., Suite 300

Portland, OR 97204

Telephone: (503) 417-0500

Facsimile: (503) 417-0521

Of Attorneys for Debtor-in-Possession

UNITED STATES BANKRUPTCY COURT

DISTRICT OF OREGON

In re:

BODY BY PASTRAMI, LLC,

Debtor.

Case No. 19-34107-tmb11

EMERGENCY MOTION TO
VOLUNTARILY DISMISS CASE

EXPEDITED CONSIDERATION
REQUESTED

Debtor in Possession, Body By Pastrami, LLC (the “**Debtor**”), by and through undersigned counsel and pursuant to 11 U.S.C. § 1112(b) and Federal Rule of Bankruptcy Procedure 9006(c)(1), requests that the Court dismiss the above-captioned bankruptcy case on an expedited basis before the twenty-one day notice period has elapsed. In support of this motion, Debtor states and represents as follows:

BACKGROUND

1. On November 6, 2019, Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code, Case No. 19-34107-tmb11.

2. Debtor is operating its business and managing its affairs as a debtor in possession pursuant to 11 U.S.C. §§ 1107 and 1108. No trustee, examiner or statutory committee has been appointed.

3. Debtor is an Oregon limited liability company, with two locations in the Portland metropolitan area.

4. On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security (CARES) Act, P.L. 116-136 to provide economic relief in the midst of the Coronavirus pandemic. Among many other things, the CARES Act provides for the provision of forgivable loans to small and mid-sized businesses in order to permit those businesses to continue to pay employees.

5. The first phase of funding associated with the CARES Act dried up immediately. To provide further relief, new funding was approved and signed into law on April 24, 2020.

6. However, Title IV, Section 4003(c)(3)(D)(V) of the CARES Act mandates that any business receiving such forgivable loans certify that “the recipient is not a debtor in a bankruptcy proceeding[.]” The application form for such forgivable loans also contains a place for applicants to make a similar certification.

7. Having reviewed the applicable provisions of the CARES Act, the Debtor believes that, other than being in bankruptcy, it otherwise meets the qualifications to receive a forgivable loan under that law, and therefore wishes to apply for and receive a forgivable CARES Act loan in the amount of approximately \$210,000 to pay for payroll and rent expenses.

8. Based on the posture of this case, it is in the best interest of creditors for this case to be dismissed in order to permit Debtor to access significant forgivable credit under the CARES Act. Dismissal will not unfairly prejudice other parties in interest.

9. Therefore, through this motion, Debtor seeks the immediate dismissal of this chapter 11 case.

BASIS FOR RELIEF REQUESTED

10. The Bankruptcy Code permits a party in interest, such as the Debtor in this case, to seek dismissal of a bankruptcy case for cause, provided it is in the best interest of creditors, 11 U.S.C. § 1112(b). Debtor submits that, under these very peculiar circumstances, it is in the best interests of creditors to permit the Debtor to voluntarily dismiss this case in order to access a forgivable CARE Act loan to pay its employees and other operating expenses.

11. Pursuant to Federal Rule of Bankruptcy Procedure 2002(a)(4), the Court generally may not hold a hearing on a motion to dismiss a chapter 11 case on less than twenty-one days' notice. However, under Rule 9006(c)(1), the Court may shorten such required notice for cause. Debtor submits that cause exists in this case to shorten the required notice period so that the Court may hear this motion as soon as possible so that the Debtor may quickly take steps to access a forgivable CARES Act loan pursuant to this second phase of funding. Specifically, the funding pool for CARES Act forgivable business loans is finite, and the Debtor is very concerned that any delay in applying for a CARES Act forgivable loan could cause such loan to be denied or reduced due to inadequate funding.

12. Counsel for Debtor has conferred with the Office of the United States Trustee (the “*UST*”), and Debtor’s secured creditors. Debtor’s secured creditors have indicated that they do not have any objection to the proposed dismissal of the case, or expedited consideration of the motion to dismiss. The UST indicated that it will not have a position on the motion, including the motion for expedited consideration.

WHEREFORE, the Debtor respectfully requests the Court hold an emergency hearing on this motion and thereafter enter an order dismissing this chapter 11 case, and grant and further relief as the Court deems just and equitable.

DATED: May 4, 2020

MOTSCHENBACHER & BLATTNER LLP

/s/ Nicholas J. Henderson

Nicholas J. Henderson, OSB No. 074027
Of Attorneys for Debtor

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, a true and correct copy of the foregoing **DEBTOR'S EMERGENCY MOTION TO DISMISS CASE** was provided to the following parties through the Court's Case Management/Electronic Case File system:

- US Trustee, Portland USTPRegion18.PL.ECF@usdoj.gov
- SUSAN S FORD susanf@sussmanshank.com
- DOUGLAS R PAHL dpahl@perkinscoie.com

I further certify that on the date set forth below, a true and correct copy of the above-described document was sent to the following parties via first class mail, postage prepaid:

- NONE

DATED: May 4, 2020

MOTSCHENBACHER & BLATTNER LLP

/s/ Nicholas J. Henderson
Nicholas J. Henderson, OSB No. 074027
Of Attorneys for Debtor